

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Ann Penny,

Complainant,

vs.

Equitable Gas Company, LLC

Respondent.

) Complaint Docket
)
) No. C-2012-2289787
)
) Electronically Filed
)
) Type of Pleading:
) **POST-HEARING BRIEF**
)
) Filed on behalf of:
)
) **Equitable Gas Company, LLC, Respondent**
)
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POST-HEARING BRIEF

AND NOW, comes the Respondent, Equitable Gas Company, LLC (“Equitable”) by its attorneys Yukevich, Marchetti, Liekar & Zangrilli, P.C. and the undersigned counsel and files this Post-Hearing Brief in the above captioned case as follows:

I. HISTORY OF PROCEEDINGS

On February 13, 2012, Ms. Ann Penny filed a Formal Complaint against Equitable which was docketed by the Pennsylvania Public Utility Commission (“Commission”) at Docket No. C-2012-2289787. Equitable was served on February 23, 2012 and filed an Answer and New Matter to the Complaint on March 14, 2012. Ms. Penny filed a Reply and New Matter to Respondent on April 11, 2012. This matter was set for an Initial Hearing by the Commission, which was conducted by telephone by the Honorable Mary D. Long on April 30, 2012.

At the conclusion of the Initial Hearing, Ms. Penny disclosed for the first time to the Commission or to Equitable that she was an attorney licensed to practice law in the Commonwealth of Pennsylvania. Ms. Penny requested the opportunity to submit post-hearing exhibits for the record and to submit a post-hearing brief. Judge Long held the record open to permit Ms. Penny to submit additional documents relating to her residency. Ms. Penny offered several post-hearing exhibits for the record. Equitable objected to the proffered exhibits. Judge Long granted all the objections except the objection to Ms. Penny’s water bill. Judge Long also agreed to Ms. Penny’s request to submit post-hearing briefs and, on June 12, 2012, entered a Briefing Order. Ms. Penny submitted her Brief on July 6, 2012.

II. COUNTER-STATEMENT OF THE CASE

As an initial matter, the Affidavits and additional exhibits Ms. Penny has attached to her Brief should not be permitted and must be stricken from the record. As set forth above, while

Judge Long granted Ms. Penny's request to provide post-hearing exhibits, only one exhibit was admitted to the record. Accordingly, the Affidavits and other exhibits now being produced by Ms. Penny, an attorney at law in the Commonwealth of Pennsylvania, should not be permitted into the record or otherwise considered by the Commission.

Service at 512 Junilla Street, Pittsburgh, PA 15120 had been terminated when, on September 28, 2011, Sophia Washington applied for service at that address. Exhibit EQ-2. The application of Ms. Washington indicated that she was the only adult residing at 512 Junilla despite the fact that the previous ratepayer of record was Mr. Roy Penny. As a result, Equitable's representative, Mr. Joe Tyson, investigated the property. On September 29, 2011, Mr. Tyson spoke with a neighbor who said, "Mr. Roy still there." Exhibit EQ-3. Accordingly, Mr. Tyson recommended that Ms. Washington's application be denied. Upon receiving a denial of her application, Ms. Washington advised Equitable that Roy was her brother who had moved out one (1) month ago. The record is undisputed that Mr. Roy Penny then called Equitable and attempted to establish service in his name on October 18, 2011, November 11, 2011, and December 6, 2011. Exhibits EQ-6, EQ-7, and EQ-8.

On December 28, 2011, Mr. Roy Penny again called Equitable. Exhibit EQ-9. In this conversation, Mr. Roy Penny advised Equitable that he had moved out of 512 Junilla Street and was living with his daughter. Exhibit EQ-9. Mr. Penny gave Equitable the new address at which he now allegedly resided, 2316 Arlington Avenue, Pittsburgh, PA 15210. Equitable's investigation indicated that this was vacant property. Exhibit EQ-10.

About the same time that Mr. Roy Penny was providing the foregoing misleading information to Equitable, Ms. Ann Penny, Complainant, applied for gas service to 512 Junilla Street. Exhibit EQ-11. Ms. Penny listed herself as the sole occupant of the household and

provided Equitable with a driver's license that listed 512 Junilla Street as her address. Exhibit EQ-11. Upon further investigation, Equitable determined that Ms. Penny was in fact an owner of 512 Junilla Street. Exhibit EQ-13.

Ms. Penny also makes much of the fact that she resided at 112 E. 14th Avenue, Homestead, PA 15120 ("E. 14th Avenue"). This address was receiving gas service from Equitable on its Customer Assistance Program ("CAP"), an income-based assistance program for low-income individuals subsidized by Equitable through its other paying customers. Although Ms. Penny now claims to have lived at this address for the entire time period in question, this address was in Equitable's CAP program as a one (1) person household with Ms. Betty Penny. Ms. Ann Penny was not listed as an occupant. Had she been listed, it would have changed the eligibility and benefits determinations (i.e. Ms. Ann Penny's income would have been considered in determining eligibility).

Based on the foregoing, Equitable concluded that Mr. Roy Penny still resided at 512 Junilla Street and, because Ms. Penny would not provide proof of another residence of Mr. Penny, denied Ms. Penny's application for service. Furthermore, Equitable concluded that Ms. Penny appeared to reside at 512 Junilla Street based upon: (1) her exclusion from the number of listed occupants of the E. 14th Avenue address for CAP eligibility purposes, (2) her own application for credit, including the address listed on her driver's license, and (3) the public records of ownership which stated that she was the owner of 512 Junilla Street. Equitable now understands that Ms. Penny strongly denies this conclusion, however, Equitable contends that these facts provide a good faith basis for its position on this matter.

III. SUMMARY OF ARGUMENT¹

Ms. Penny, as the Complainant seeking relief from the PUC has the burden of proof. Ms. Penny has failed to satisfy her burden of demonstrating that Equitable has violated any provision of the Public Utility Code or the regulations promulgated thereunder. Equitable is entitled to know the adult occupants of a residence and to request proof thereof before providing natural gas service to that residence. Moreover, given the substantial uncertainty regarding the occupants of 512 Junilla Street at any given time and the evidence produced at the hearing of this matter, Equitable made a good faith determination that Ms. Ann Penny resided at 512 Junilla Street. The facts of record demonstrate that there was a likelihood that what was occurring at 512 Junilla Street is what is known in the utility industry as “name switching” in which another occupant attempts to obtain service in their name after another occupant has accrued a large outstanding balance. As a public utility, Equitable has an obligation to prevent such conduct, because it adversely impacts its paying customers.

The record establishes that Equitable made its determination about Ms. Penny’s application in good faith given the surrounding facts and circumstances.

IV. ARGUMENT

It is well settled that a proponent of an order, the party seeking affirmative relief from the Commission, bears the burden of proving by substantial evidence that he or she is entitled to the requested relief. See, 66 Pa.C.S. § 332. In order to satisfy this burden of proof, a Complainant “must show that the utility is responsible or accountable for the problem described in the Complaint.” *Patterson v. Bell Telephone Co. of Pa.*, 72 Pa. PUC 196 (1990), citing, *Feinstein v.*

¹ The Briefing Order dated June 12, 2012 called for a section of the Brief to be titled “Discussion.” Equitable respectfully submits that its Summary of Argument and Argument sections of the Brief herein satisfy this requirement.

Philadelphia Suburban Water Company, 50 Pa. P.U.C. 300 (1976). The Complainant must satisfy this burden by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. Public Utility Commission*, 578 A.2d 600 (Pa. Commw. 1990). For the reasons that follow, Ms. Penny has failed to satisfy her burden that Equitable is responsible for the problems of which she complains. Ms. Penny complains that Equitable (1) required proof of Mr. Roy Penny's residence and (2) made an initial determination that Ms. Penny resided at 512 Junilla and therefore that she was also responsible for the balance owed.

First, with regard to Mr. Penny's residence, the Pennsylvania Public Utility Code provides, "Prior to providing utility service, a public utility may require the applicant to provide the names of each adult occupant residing at the location and proof of their identity." 66 Pa.C.S. § 1404(d). The Commission has included this provision in its regulations at 52 Pa. Code 56.32(c). Equitable respectfully submits that these provisions are intended to address situations just like the one herein, where a public utility has good reason to suspect "name switching." There is ample support in the record to establish that Mr. Roy Penny resided at 512 Junilla Street and Ms. Penny does not contest this fact in this proceeding. When Ms. Penny applied for gas service in December 2011, Equitable had good reason to believe that Mr. Penny was still residing at that address. After all, he had called and requested service at that address in his name only days earlier on December 6, 2011. Moreover, later that same December, Mr. Penny advised Equitable that he had moved out of 512 Junilla Street, however the new address he provided was a vacant lot. Thus, when Ms. Penny applied for service and did not list Mr. Roy Penny as one of the adult occupants, Equitable appropriately requested proof of his location. When she refused to provide such information, Equitable denied her application.

The record provides no support for the conclusion that Equitable violated the Public Utility Code or the Commission's regulations. Rather, Equitable followed the relevant provisions in a manner consistent with the intent of such provisions to stop those few customers who engage in "name switching."

Second, with regard to Ms. Penny's residence, Equitable submits that the record establishes its good faith conclusion that Ms. Penny resided at 512 Junilla Street. In this regard, the Public Utility Code states as follows:

A public utility may establish that an applicant previously resided at a property for which residential service is requested through the use of mortgage, deed or lease information, a commercially available consumer credit reporting service or other methods approved as valid by the commission.

66 Pa.C.S. § 1407(emphasis added).

This statutory provision has also been included in the implementing regulations of the Commission at 52 Pa. Code § 56.35(b)(2). The record before the Commission clearly establishes that Ms. Penny listed herself as an occupant of 512 Junilla Street, and provided a driver's license showing that as her address. See, Exhibit EQ-11. In addition, the deed to 512 Junilla Street shows that Ms. Penny is an owner of that property. Equitable does not contend that owners of property, as reflected in deeds, should necessarily be deemed to be "residents" of their property. However, the statute and regulations expressly permit Equitable to consider this fact in making such determinations.

Finally, Equitable wishes to note for the Commission that it no longer takes the position that Ms. Penny was a resident of 512 Junilla Street during the time during which the balance was accrued by Mr. Roy Penny. In light of Ms. Penny's persistent statements and submissions to the Commission in these proceedings, Equitable will accept Ms. Penny's contention that she was in

fact a resident and adult occupant of the E. 14th Avenue property for the time period of 2005 through 2011 and will cause its records to accurately reflect this fact.

For the reasons set forth herein, Equitable submits that the record does not support any finding that Equitable violated any provision of the Public Utility Code or the Commission's regulations. Ms. Penny has not satisfied her burden of making such a showing and her Complaint in this proceeding should be dismissed.

V. PROPOSED FINDINGS OF FACT

1. On September 28, 2011, Sophia Washington applied for service at 512 Junilla Street, Pittsburgh, PA (the "Property"). Exhibit EQ-2.

2. The application of Ms. Washington indicated that she was the only adult resident at 512 Junilla Street. Exhibit EQ-2.

3. On September 29, 2011, Equitable's representative, Mr. Joe Tyson, went to investigate 512 Junilla Street. Exhibit EQ-3.

4. Mr. Tyson spoke with a neighbor who said, "Mr. Roy still there." Exhibit EQ-3.

5. Upon receiving a denial of her application, Ms. Washington advised Equitable that Roy was her brother who had moved out one (1) month ago. Exhibit EQ-5.

6. Mr. Roy Penny called Equitable and attempted to established service in his name on October 18, 2011, November 11, 2011, and December 6, 2011. Exhibits EQ-6, EQ- 7, and EQ-8.

7. On December 28, 2011, Mr. Roy Penny again called Equitable and advised Equitable that he had moved out of 512 Junilla Street and was living with his daughter. Exhibit EQ-9.

8. Mr. Penny gave Equitable the new address at which he now allegedly resided, 2316 Arlington Avenue, Pittsburgh, PA 15210, which is shown by the Allegheny County Office of Property Assessments to be vacant property. Exhibit EQ-10.

9. On December 27, 2011, Ms. Ann Penny, Complainant, applied for gas service to 512 Junilla Street. Exhibit EQ-11.

10. Ms. Penny listed herself as the sole occupant of the household and provided Equitable with a driver's license that listed 512 Junilla Street as her address. Exhibit EQ-11.

11. Ms. Penny is an owner of 512 Junilla Street. Exhibit EQ-13.

VI. PROPOSED CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and the subject matter of this proceeding. 66 Pa. C.S.A. § 701.

2. The Complainant, Ms. Ann Penny, bears the burden of proof. 66 Pa.C.S.A. § 332(a).

3. The Responsible Utility Customer Protection Act, 66 Pa. C.S.A. § 1401, et seq., applies to this proceeding.

4. Equitable may require an applicant such as Ms. Penny to provide the names of each adult occupant residing at the location and proof of their identity. 66 Pa.C.S. § 1404(d).

5. Equitable had good faith reasons for concluding that Ms. Ann Penny resided at 512 Junilla Street during the time for which a balance was accrued. 66 Pa.C.S. § 1407.

6. The Complainant, Ms. Ann Penny, has failed to satisfy her burden of proof.

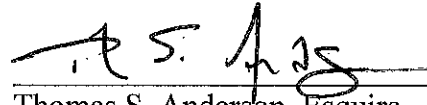
VII. CONCLUSION OF REQUESTED RELIEF

1. The Formal Complaint filed by Ann Penny against Equitable Gas Company, LLC at Docket No. C-2012-2289787 is dismissed with prejudice.

Yukevich, Marchetti, Liekar & Zangrilli, P.C.

August 3, 2012

By:



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the attached document was served as follows:

ATTACHED DOCUMENT: **Post-Hearing Brief**

DATE OF SERVICE: August 3, 2012

BY: FIRST-CLASS U.S. MAIL

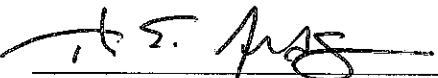
TO: Ann Penny
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BY: FACSIMILE and FIRST-CLASS U.S. MAIL

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